

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Vesta Strategies, LLC,

NO. C 07-06216 JW

Plaintiff,

v.

**ORDER DISMISSING PLAINTIFF'S
COMPLAINT; REINSTATING ENTRY OF
DEFAULTS; SETTING HEARING FOR
DEFAULT JUDGMENT**

Robert Estupinian, et al.,

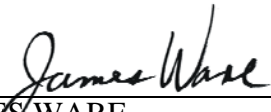
Defendants.

On April 6, 2009, the Court conducted a hearing on its Order to Show Cause ("OSC") as to why default should not be reinstated against Counter-Defendant Vesta Strategies, LLC and Third Party Defendant John Terzakis and why the Court's previous Order of Dismissal regarding Vesta Strategies, LLC's claims should not be reinstated. (See Docket Item No. 171.) The Court also considered the declaration submitted by the Mutual Vision Defendants regarding the amount of sanctions that should be awarded pursuant to the Court's March 20, 2009 Order. (Id.)

Neither Counter Defendant Vesta nor Third Party Defendant Terzakis filed any response to the Court OSC Order, nor did they appeared at the hearing to prosecute their action and defend the counterclaims against them. The Court had given these parties ample time to follow its Order and had previously warned that failure to do so will result in a dismissal on the merits for lack of prosecution. See Fed. R. Civ. P. 41(b). It appears that these parties have abandoned this action. Accordingly, the Court orders as follows:

- (1) Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Plaintiff Vesta Strategies, LLC's Complaint is dismissed with prejudice. Judgment shall be entered accordingly.
- (2) The Clerk's Entry of Default as to the counter-claims and third party claims against Plaintiff Vesta Strategies, LLC and John Terzakis are reinstated. (See Docket Item No. 99.)
- (3) A hearing for the Mutual Vision Defendants' anticipated Motion for Default Judgment is set for **June 1, 2009 at 9 a.m.** The motion shall be filed and served in accordance with the Civil Local Rules of the Court.
- (4) Pursuant to the Court's March 20, 2009 Order, Vesta Strategies, LLC and John Terzakis shall pay the Mutual Vision Defendants **\$1,500** for fees and costs incurred as the result of having to respond to additional motions. Payment shall be made within **30 days** from the date of this Order.

Dated: April 8, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: April 8, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy